Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service	)	PR Docket No. 89-552 RM-8506
Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services	)	GN Docket No. 93-252
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 220-222 MHZ	)	PP Docket No. 93-253

REPLY COMMENTS OF
COLUMBIA CELLULAR CORPORATION

Columbia Cellular Corporation ("Columbia"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, hereby submits its reply comments regarding the Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking in the captioned proceeding.[1] For its reply comments Columbia states as follow:[2]

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[1] Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, PR Docket No. 89-552 (RM-8506), GN Docket No. 93-252, GN Docket No. 93-252, FCC 95-312 (released August 28, 1995) (hereinafter "NPRM").

[2] As noted in its initial comments, Columbia will continue its participation in the 220 MHZ service under whatever operating rules the Commission may adopt from time to time. Therefore, Columbia will herein continue to refrain from commenting on the NPRM's proposals for changes in system operations. Instead, Columbia's reply comments will focus on only the other parties comments regarding the treatment of pending non-commercial, nationwide applications.

Like Columbia, the vast majority of those commenters addressing the treatment of the presently allocated non-commercial, nationwide ("NCNW") 220 MHz channels urge the Commission to award those channels by random selection (i.e., lottery) among the pending applications for those channels.[3] In fact, only four commenters oppose retention of, and selection by lottery among, the pending applications.[4] Those four are parties who failed to timely compete for the NCNW channels, but now seek to compete for the NCNW spectrum, the value of which they see being enhanced by proposed changes in the operating rules for the 220 MHz Service.

DISCUSSION

Metricom, PageNet, SMRAG and USMC all basically assert that they will be harmed if competition for the NCNW channels

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[3] Such treatment is supported by 360 Mobile Data Joint Venture ("360 Mobile"), Airborne Freight Corporation ("Airborne"), American Mobile Telecommunications Association, Inc. ("AMTA"), ComTech Communications, Inc. ("ComTech"), E.F. Johnson Company ("E.F. Johnson"), Fleet Maintenance, Inc. ("Fleet"), Global Cellular Communications, Inc. ("Global"), Industrial Telecommunications Association ("ITA"), MTEL Technologies, Inc. ("Mtel"), Personal Communications Industry Association ("PCIA"), The Telecommunications Association ("UTC"), PLMRS Narrowband Corp. ("PLMRS"), Securicor Radiocoms Ltd. ("Securicor"), and Washington Legal Foundation ("WLF"). In addition, Ericsson Corporation ("Ericsson"), calls for at least one 10 channel NCNW authorization to be awarded by lottery among the pending applications.

[4] Those opposing continued use of lotteries are Metricom, Inc. ("Metricom"), Paging Network, Inc. ("PageNet"), SMR Advisory Group, L.C. ("SMRAG"), and US MobilComm, Inc. ("USMC").

continues to be restricted to the pending applicants, who filed long ago, before Metricom, PageNet, SMRAG and USMC recognized the potential commercial value of those channels. They put particular emphasis on the possibility that the NCNW channels may become more commercially valuable as a result of proposed changes to the operating rules for the 220 MHz Service. They also contend that they may have applied previously for the NCNW channels if they had been able to foretell the future changes in store for the 220 HHz Service.[5]

What the comments of Metricom, PageNet, SMRAG and USMC ignore is that the pending applicants have certain rights and equitable expectations arising out of their timely filing, and prolonged maintenance, of their applications. As both Columbia and Mtel pointed out in their initial comments, applicants have the right to be treated in a manner equal to other, similarly situated applicants. Therefore, the pending NCNW applicants, like others timely who filed 220 MHz Service applications in 1991, have the right to have licensees selected from among their limited number, without competition from late arriving

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[5] USMC contends that because the 220 MHz channels already awarded are "developing" into commercial-use spectrum, one must assume that the NCNW channels will follow. That contention ignores the fact that, under the Commission's rules governing the 220 MHz Service, all channels, with the exception of the NCNW channels, offered the option of immediate and full commercial use (hence the distinction between commercial and non-commercial nationwide channels). The greater flexibility available with commercial channels was reflected in the enormously greater number of applicants seeking the 5 channel commercial nationwide authorizations with the mere twenty applicants seeking the 5 channel NCNW authorizations.

opportunists. It also is a right of the pending applicants to have the NCNW licenses awarded on the basis of a lottery among them; in the same manner as the several thousand other 220 MHz licensees were selected.[6] Equally important, as noted in the initial comments of Mtel and PLMRS, is that the parties with NCNW applications pending as of July 26, 1995, are entitled to the same treatment as that afforded pending applicants in other services.[7]

SMRAG takes an additional tack in its efforts to displace the pending NCNW applicants. SMRAG starts by proposing three "factors" to be considered by the Commission in determining the fate of the pending NCNW applications, and concludes by presenting its own view of the outcome of each such consideration.

First, SMRAG suggests that conducting an auction among new applicants for what presently are the NCNW channels would "maximize the availability of nationwide service to the public." This conclusion, however, is based on the assumption that the NCNW channels will be re-classified as CMRS, and thereby be

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[6] The precedent cited by PageNet to support its contention that applicants have no right to the maintenance of their applications is not applicable in the instant situation. Those cases did not address the procedural and equitable rights of pending applicants to be treated in a manner consistent with other contemporaneously filed applications in the same service. The Commission must recognize that the NCNW applications are entitled to treatment consistent with all the other 220 MHz applications filed in 1991.

[7] See, Cellular Unserved Areas, 9 FCC Rcd 7387 (1994).

available to a multitude of subscribers. While commercial channels will inevitably have more "public" users than private, non-commercial channels of equal capacity, SMRAG's conclusion leaps beyond the threshold question of whether the non-commercial character of the NCNW channels should be maintained. As several commenters pointed out, there remains a continuing need for private communications capacity, as evidenced by the longstanding pendency of thirty-three NCNW applications.[8] And, despite what the comments of E.F. Johnson characterize as a "troubling trend" towards not reserving spectrum for non-commercial purposes, the Commission still has a statutory obligation to provide spectrum for private, non-commercial purposes. Therefore, SMRAG's first factor has no relevance to this proceeding.

Next, SMRAG concluded that an auction among new applicants would be the most expeditious means of providing nationwide service to the public. In addition to again ignoring the threshold non-commercial versus commercial issue, SMRAG's suffers from other logical defects. The timing of the principal potential delays cited by SMRAG (i.e., the need to dispose of petitions for reconsideration, and the need to solicit amendment information) is completely within the control of the Commission. On this point, Columbia is constrained to repeat Commissioner Quello's comments that the delay in the resolution of the NCNW applications results from Commission inaction on those matters.

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[8] E.g., comments of Airborne, Fleet and UTC.

In its comments, UTC cautioned the Commission against using its own delay to "bootstrap" a need for change in the NCNW selection process. Columbia submits that UTC's advice is a compelling rebuttal to SMRAG's second conclusion.

SMRAG's third conclusion is that an auction among new applicants would deliver the NCNW channels to "the parties who value it most highly. There are two glaring defects in that conclusion. First SMRAG, again ignoring the threshold non-commercial versus commercial issue, seeks to compare the value of non-commercial channels with the value of commercial channels. Second, like Commission in the NPRM, incorrectly equates a party's willingness and ability to "pay" the most for spectrum with a party's "valuing" of that same spectrum. If what SNRAG and the Commission are saying is that the greatest value of a channel is to be determined by the proceeds of a sale of that channel, then Columbia must warn the Commission that it will never be able to meet its statutory obligation to provide spectrum to meet private, non-commercial communications requirements.

Columbia also must challenge SMRAG's assertion that the pending applicants have not "yet incurred prohibitive costs with respect to their applications." Columbia submits that SMRAG's assertion is rather cavalier for a party who has not borne any 220 MHz costs (E.g., application preparation and filing, legal fees and expenses, business plan development, supporting lines of credit) over the past several years. On the basis of its own

experience, Columbia can state that a mere refund of filing fees will do little to make any of the applicants whole, much less to compensate them for opportunities foregone by virtue of relying on the Commission's promulgated rules and asserted good faith.

Virtually all of the commenters supporting the retention of lottery selection procedures for the pending NCNW applications point to a continuing need for private, non-commercial radio communications capacity.[9] Columbia, which has a similar continuing requirement, urges the Commission to consider its statutory obligation to provide spectrum capacity to meet such requirements. Fair consideration of such needs should negate any impulse to deprive the pending NCNW applicants of their long-sought opportunity to obtain capacity to meet their internal communications needs.

Finally, Columbia notes that ComTech's comments characterize the NPRM's proposals to submit the NCNW channels to the auction process as "a transparent attempt to elevate the revenue raising potential of the spectrum over both the needs of non-commercial users, the rights of existing applicants and the development of narrowband technology." So alerted, Columbia hereby specifically requests that the Commission not equate auction revenues with the public interest. To do so would be to abandon the Commission's obligation to efficiently and equitably manage spectrum resources in the public interest.

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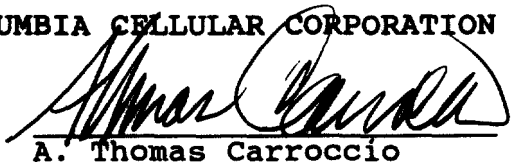
[9] See, e.g., comments of Airborne, Fleet and UTC.

Conclusion

In light of the foregoing, the Commission should affirmatively exercise its discretion regarding the use of lotteries as the NCNW selection method, and expeditiously proceed to award the NCNW authorizations by lotteries among the existing pool of thirty-three long standing applications.

Respectfully submitted,

COLUMBIA CELLULAR CORPORATION

By: 

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